

ORIGINAL

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8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA

10 THOMAS DAVIS III, individually and on
behalf of all others similarly situated,

Case No.

11 Plaintiff,

12 vs. **NOTICE OF REMOVAL**

13 WESTGATE PLANET HOLLYWOOD LAS
VEGAS, LLC, WESTGATE RESORTS, INC.,
14 WESTGATE RESORTS, LTD., CFI SALES &
MARKETING, LTD., CFI SALES &
15 MARKETING, LLC, CFI SALES &
MARKETING, INC. AND "John Doe" entities
16 to 1 to 25, name and number unknown.

17 Defendants.

18
19 TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
20 DISTRICT OF NEVADA, PLAINTIFF THOMAS DAVIS AND TO HIS ATTORNEYS OF
21 RECORD, MARK THIERMAN OF THE THIERMAN LAW FIRM AND LEON
22 GREENBERG OF LEON GREENBERG, A PROFESSIONAL CORPORATION:

23 PLEASE TAKE NOTICE THAT Defendants, Westgate Planet Hollywood Las Vegas,
24 LLC., Westgate Resorts, Inc., Westgate Resorts, Ltd., CFI Sales & Marketing, Ltd., CFI Sales &

1 Marketing, LLC., and CFI Sales & Marketing, Inc. ("Petitioners/Defendants"), hereby remove
 2 this action from the District Court of Clark County, Nevada to the United States District Court
 3 for the District of Nevada. This removal is based on two grounds: (1) this action involves a
 4 federal question as defined by 28 U.S.C. §§ 1331, 1367 and 1441(b); and (2) this Court has
 5 original jurisdiction under the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d)(2).
 6 Removal is proper for the reasons stated below:

FACTUAL BACKGROUND

7 1. On May 13, 2008, Plaintiff Thomas Davis III ("Plaintiff") filed his Complaint in
 8 the District Court of Clark County, Nevada entitled: *Thomas Davis III, individually and on*
 9 *behalf of all others similarly situated v. Westgate Planet Hollywood Las Vegas, LLC, Westgate*
 10 *Resorts, Inc., Westgate Resorts, Ltd., CFI Sales & Marketing, Ltd., CFI Sales & Marketing, LLC,*
 11 *CFI Sales & Marketing, Inc., and "John Doe" entities 1 to 25, name and number unknown,*
 12 *designated as Case No.: A562978.* The Complaint alleges the following five purported causes
 13 *of action against Petitioners/Defendants: (1) alleged violations of the Fair Labor Standards*
 14 *Act, 29 U.S.C. §201, et seq., due to Defendants' alleged failure to pay minimum wages overtime*
 15 *pay; (2) alleged violations of Nevada's labor laws, specifically Nevada Revised Statutes §§*
 16 *608.016, 608.018, 608.019, 608.100 and 608.250, involving unpaid wages, unpaid minimum and*
 17 *overtime wages, and unpaid rest periods; (3) alleged violation of Nevada Revised Statutes §*
 18 *608.040 for unpaid wages owed after discharge; (4) alleged breach of contract; and (5)*
 19 *alleged conversion. True and correct copies of the Summons, Complaint, and all other*
 20 *process, pleadings, and orders served upon Petitioners/Defendants are attached hereto as*
 21 *Exhibit "A".*

22 2. Plaintiff seeks class action status with respect to Counts 2 and 3 (Nevada statutory
 23 claims); Count 4 (breach of contract) and lastly, Count 5 (conversion). See Cmplt. ¶ 17.

1 3. Plaintiff claims that the putative class is at least 1,000 members and with at least
 2 500 Nevada Subclass members. See Cmplt. ¶¶ 6,18. The remaining members are located
 3 nationwide. See Cmplt. ¶ 10.

4 **REMOVAL BASED ON FEDERAL QUESTION JURISDICTION**

5 **A. This action involves a federal question- alleged violation of FLSA- and is being
 6 removed within 30 days from the service of initial complaint.**

7 4. This is a civil action over which this Court has original jurisdiction under 28
 8 U.S.C. §§ 1331 and 1367. Plaintiff's first cause of action is based entirely on alleged violations
 9 of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§207 and 213. See Cmplt., ¶¶ 14,16,34-35
 10 and 37. Accordingly, Defendants may remove this action because it involves a federal question
 11 that arises "under the Constitution, laws, or treatises of the United States." 28 U.S.C. §§ 1331,
 12 1441(b).

13 5. On May 19, 2008, Plaintiff, through his counsel, caused a copy of the Summons
 14 and Complaint to be served on Incorp Services, Defendants' Registered Service Agent in
 15 Nevada. The Complaint is the initial pleading setting forth the claim for relief upon which this
 16 action is based and is the basis for removal. The Petitioners/Defendants did not receive any other
 17 initial pleadings or other notice of this claim before May 19, 2008. Accordingly, this Notice of
 18 Removal is being filed within (30) days after receipt by Petitioners/Defendants of the initial
 19 pleading and is timely filed pursuant to 28 U.S.C. § 1446(b).

20 6. Petitioners/Defendants certify that a copy of this Notice of Removal will be
 21 served promptly on Plaintiff and filed with the Clerk of the Eighth Judicial District Court, Clark
 22 County, Nevada pursuant to 28 U.S.C. § 1446(d).

23 7. Likewise, this Court has supplemental jurisdiction over Plaintiff's remaining state
 24 causes of action pursuant to 28 U.S.C. § 1367(a). These state claims are substantially related to
 Plaintiff's first cause of action. Because these causes of action arise from the same common

1 nucleus of operative facts as does the first cause of action, all should be tried in one action.
2 *Nishimoto v. Federman-Bachrach & Assoc.*, 903 F.2d 709, 714 (9th Cir. 1990). Considerations
3 of convenience, judicial economy and fairness to the litigants strongly favor this Court's exercise
4 of jurisdiction over Plaintiff's entire Complaint. *United Mine Workers v. Gibbs*, 383 U.S. 715,
5 725-26 (1996).

6 8. Accordingly, this entire action may properly be removed to this Court.

REMOVAL BASED ON THE ORIGINAL JURISDICTION CONFERRED BY THE CLASS ACTION FAIRNESS ACT

A. In the alternative, removal is appropriate under the Class Action Fairness Act of 2005.

10 9. The Complaint, filed on May 13, 2008, commenced the action by Thomas Davis
11 III individually and on behalf of the class of persons he seeks to represent. See Cmplt., ¶ 3.

12 10. According to the Complaint, there are "at least 1000 putative class members
13 nationwide and over 500 Nevada Subclass members." See Cmplt., ¶ 18. Under Count V alone,
14 Plaintiff and his putative class seek to recover at least \$10,000,000 due to
15 Petitioners/Defendants' alleged conversion of the sales persons reserve accounts. See Cmplt., ¶
16 62. Specifically, Plaintiff seeks "on behalf of ...numerous similarly situated members of the
17 Nevada subclass or a class of *all of defendants' commissioned timeshare salespersons in the*
18 *United States* a judgment against the defendants for the sums owed to such persons as a result of
19 defendants' conversion of the plaintiffs' reserve funds along with an *award of punitive damages*
20 *in excess of ten thousand dollars (\$10,000) on behalf of each plaintiff...*" See Cmplt., ¶ 62
21 (Emphasis Added).

22 11. The Class Action Fairness Act of 2005 (“Act”) grants this Court original
23 jurisdiction over Plaintiff’s class action claims. 28 U.S.C. § 1332(d)(2). Specifically, the Act
24 grants original jurisdiction of any civil action in which the matter in controversy exceeds

1 \$5,000,000.00 and is a class action in which any putative class member is a citizen of a State
 2 different from any defendant. 28 U.S.C. § 1332 (d)(2)(A).

3 12. In this particular case, the matter in controversy exceeds \$5,000,000.00. In fact,
 4 on the conversion claim alone, Plaintiff seeks over \$10,000,000 in punitive damages for the
 5 class. 28 U.S.C. §1332 (d)(6) (In any class action, the claims of the individual class members
 6 shall be aggregated to determine whether the matter in controversy exceeds the sum or value of
 7 \$5,000,000, exclusive of interests and costs).

8 13. Likewise, at least one member of the class is a citizen of a different State than the
 9 Petitioners/Defendants. Petitioners/Defendants are all incorporated under the laws of Florida and
 10 are all citizens of Florida. At least 500 members of the putative class (inside sales persons hired
 11 by Petitioners/Defendants) are supposedly citizens of Nevada. See Cmplt. ¶¶ 5, 6, 10, 18.
 12 Consequently, this action meets the diversity standard set by the Act. 28 U.S.C. § 1332
 13 (d)(2)(A).

14 14. This Court should note that it appears that Plaintiff has purposely limited the
 15 number of putative plaintiffs outside of Nevada. Plaintiff alleges that Petitioners/Defendants
 16 employed "thousands of such inside sales persons within the United States... within the last
 17 three years." See Cmplt. ¶ 10 (Emphasis added). Yet, Plaintiff then arbitrarily states that there
 18 are 1,000 members and at least 500 are Nevada citizens. It is evident that Plaintiff is attempting
 19 to circumvent the Act by diluting the actual number of putative class members residing outside
 20 of Nevada. The Petitioners/Defendants believe that the putative class, as described by Plaintiff¹,
 21 may approach 10,000 putative plaintiffs, the substantial majority of whom reside outside
 22 Nevada.

23

24 1 Petitioners'/Defendants' analysis of Plaintiff's allegations to establish jurisdiction in
 this Court does not admit that any class action - Nevada or nationwide - is justified or proper.

1 15. This action is ripe for removal under the Class Action Fairness Act of 2005.
2
3 WHEREFORE, Petitioners/Defendants hereby remove the above-entitled action now
4 pending in the Eighth Judicial District Court, Clark County, Nevada, as Case No. A562978, to
this Court.

DATED this 4th day of June, 2008.

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

By 
THOMAS F. KUMMER
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Attorneys for Defendants

1 **CERTIFICATE OF SERVICE**

2 Pursuant to FRCP 5(b), I hereby certify that service of the foregoing NOTICE OF
3 REMOVAL was made this date by depositing a true copy of the same for mailing at Las Vegas,
4 Nevada, addressed to each of the following:

5 Mark R. Thierman, Esq.

6 THIERMAN LAW FIRM

7 7287 Lakeside Drive

8 Reno, Nevada 89511

9 **Attorney for Plaintiff**

10 **Thomas Davis, III**

11 Leon Greenberg, Esq.

12 A Professional Corporation

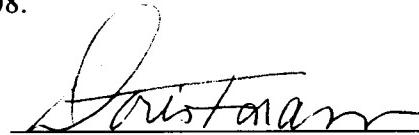
13 633 South 4th Street, Suite 4

14 Las Vegas, Nevada 89101

15 **Attorney for Plaintiff**

16 **Thomas Davis, III**

17 DATED this 4th day of June, 2008.

18 
19 an employee of Kummer Kaempfer Bonner
20 Renshaw & Ferrario